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Court of Appeals, Division III Cause No. 291537

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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By: \_\_\_\_\_

IN THE SUPREME COURT OF THE STATE OF  
WASHINGTON

ORIGINAL

In Re the Matter of the

Estate of AUDREY P. BLESSING, deceased

FILED

APR 29 2011

CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

PETITION OF STEPCHILDREN OF AUDREY P. BLESSING  
FOR REVIEW PER RAP 13.3(b)

JACKE L. BLAIR  
Attorney for Petitioners  
Mullin, Cronin, Casey & Blair, P.S.  
115 North Washington, Third Floor  
Spokane, WA 99201  
Phone: (509) 455-7999  
WSBA NO. 7901

Please see accompanying:

- 1) Petitioners' request to supplement the record with Appendix C (legislative history of RCW 4.20.020); and
- 2) Petitioners' request to file more than a 20 page brief (RAP 10.4).

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### **3. IDENTITY OF PETITIONERS**

Petitioners are the four (4) adult stepchildren of Audrey P. Blessing, their stepmother, deceased. Petitioners ask the Washington Supreme Court to accept review of the Court of Appeals Division III decision reversing the Spokane County Superior Court judgment that Petitioners are stepchildren for purposes of being beneficiaries of the Washington State wrongful death statute - RCW 4.20.020.

### **4. COURT OF APPEALS DIVISION III DECISION**

Petitioner(s) seek review of the published Court of Appeals, Division III, decision terminating review of The Estate of Audrey P. Blessing, deceased, No. 291537-III, filed March 24, 2011. A copy of that decision is attached as Appendix A, pages A-1 through A-8.

### **5. ISSUES PRESENTED FOR REVIEW**

**Issue: A.** The Washington State Supreme Court in the matter of In re Bordeaux's Estate, 37 Wn.2d 561, 593, 225 P.2d 433 (1950) held that the death of the birth parent of stepchildren did not end the stepparent to stepchild relationship that had existed prior to that death. Division III's decision on page 8 is in conflict with Bordeaux, as it held that the death of the birth father of Petitioners ended their stepchild relationship with

Audrey Blessing. The issue framed is whether the death of the birth father of Petitioners ended their stepchild relationship.

**Issue: B.** The Washington State Supreme Court has endorsed a legislative and decisional policy of improving and enhancing the rights of stepchildren. This policy was set forth in Bordeaux, at 594. This policy is summarized in the dissent of Klossner v. San Juan County, 93 Wn.2d 42, 50, 605 P.2d 330 (1980). Division III's holding is in conflict with that public policy and other legislative enactments in which stepchild/stepchildren rights have been enhanced, which include:

- (1) An inheritance tax statute RCW 83.08.020 in In re Ehler's Estate, 53 Wn.2d 679, 681 (1959), where divorce did not end the stepchild relationship;
- (2) The intent of the legislature in construing (prior) RCW 26.20.030(1)(b) was to provide child support to stepchildren the same as to natural children, which was until the marital status was terminated. State v. Gillaspie, 8 Wn. App. 560, 563, 507 P.2d 1223 (1973);
- (3) In the 1965 descent and distribution statutory scheme, RCW 11.04.095 which prevents an escheat in favor of stepchildren.

- (4) Industrial insurance affords benefits to stepchildren and stepparent - RCW 51.08.030 and 51.08.050.
- (5) The Department of Social and Health Services' regulation that provides stepchildren with distribution of Aid to Families with Dependent Children (AFDC) - then WAC 388-24-135;
- (6) The community property statutory requirement of a stepparent to support a dependent stepchild until the marriage relationship is terminated, RCW 26.16.205; and
- (7) The inclusion of stepchildren as a class of beneficiaries that is entitled to recover under the wrongful death statute, RCW 4.20.020.

**The framed issue is then, after review of the legislative and decisional public policy along with the principles of statutory construction, does the statutory term "stepchildren" in RCW 4.20.020 include Petitioners?**

**Issue: C.** When the Superior Court denies TEDRA fees and costs, was it appropriate for the Appellate Court to award the estate its fees and costs under these circumstances?

**6. STATEMENT OF THE CASE**

**A. Statement of Facts and Procedural History:**

Appellant(s)/Petitioner(s) are John Blashka,\* Julie Ann Frank, Diana Marie Estep, and Carla Blaschka. They are the adult surviving stepchildren of Audrey P. Blessing by the fact of Audrey's marriage to their birth and adoptive father, Carl Leo Blaschka, on December 24, 1964.\*\* At the time of Audrey's marriage to Mr. Blaschka, Audrey (then Hendricks) had three (3) birth daughters from her prior marriage to Allen Hendricks.

Audrey, Carl, and their respective children became one family and lived together as one blended stepfamily until Carl died thirty (30) years later on October 6, 1994.

After Carl died, Audrey, John, Julie, Diana, and Carla maintained a close, loving mother/child relationship. Audrey married Robert Blessing eight (8) years later on September 21, 2002. During her marriage to Mr. Blessing, Audrey and her stepchildren continued to maintain a close,

\*John's last name is spelled without the "c."

\*\*The Blaschkas' birth mother was Marion. Carl and Marion were divorced in 1964 and Marion died on August 23, 2003. Marion had no parent relationship with Petitioners.

loving family relationship. Mr. Blessing died on or about November 25, 2005. Audrey was again a single woman and maintained the mother/child relationship until she died on September 27, 2007. See CP 37-124.

Audrey's Will named and provided for her four (4) stepchildren, as well as her surviving two (2) birth daughters (Cindy Hagensen and Tami Tate).

After Audrey's death, Cindy Hagensen, as Personal Representative of Audrey's estate, made a wrongful death liability insurance claim involving Audrey's death. Those claim funds are not part of Audrey's estate assets, but are part of an award under RCW 4.20.020.

As Personal Representative, Cindy Hagensen notified the Blaschka stepchildren that they were not stepchildren as provided for in RCW 4.20.020. Petitioners brought a TEDRA (RCW 11.96A) action to determine their status as stepchildren on November 5, 2009.

Audrey's estate assets are currently being probated and Cindy Hagensen, Tami Tate, John Blaschka, Julie Ann Frank, Diana Estep, and Carla Blaschka are all devisees named in Audrey's Last Will.

The four (4) stepchildren of Audrey maintain that they are now and have continued to be Audrey's stepchildren after their father's death on October 6, 1994.

The Personal Representative of Audrey's estate (as the designated person to bring a wrongful death claim under RCW 4.20.020) contends that the death of Mr. Blaschka ended their stepchildren status and that to be Audrey's stepchildren, there must be a current marriage between Audrey and Carl. The estate contends that the death of Mr. Blaschka "automatically"<sup>1</sup> ended Audrey's stepmother relationship of nearly 43 years to the four (4) Petitioners.

The Honorable Michael P. Price determined by summary judgment that the Blaschka children were stepchildren for purposes of the wrongful death statute. This appeal by the Petitioners is from the Division III's reversal of the trial court's entry of a summary judgment that: (1) the Blaschka children are statutory beneficiaries of any wrongful death action regarding Audrey P. Blessing; and (2) the estate's motion to: declare Petitioners are not stepchildren; dismiss Petitioners' TEDRA petition; and the awarding to the estate reasonable attorney fees and costs are all denied. (CP141-146) The trial court denied the estate's motion for reconsideration. (CP 147-149)

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<sup>1</sup> "Automatically" was the term negated by Bordeaux, at p. 563

Division III determined that there was a close, loving relationship between Audrey and her stepchildren at page 2. This was based on the Declarations of Petitioners:

“When my biological mother abandoned my sisters, my Dad, and me it was apparent she was not coming back and we needed a mother that would love and care for us ...” (See the balance of this quote at CP 37-41.)

Petitioner Julie Frank states:

“Audrey was my mom, all my life, since I was 10 years old ...” (See the balance of this quote at CP 42-52.)

Petitioner Diana Estep states:

“When I was 9 years old, my biological mom disappeared ... December 24, 1964 Audrey and Carl married, making us a family of 9 ...” (See the balance of this quote at CP 53-88.)

Petitioner Carla Blaschka states:

“... Audrey was my mom, and remained my mom all my life ...” (See the balance of this quote at CP 89-124.)

This long and loving relationship was found to exist by both the trial court and Division III. This is the same relationship discussed in Bordeaux at p. 562.

The estate timely appealed to the Court of Appeals, Division III on June 18, 2010.

The matter was briefed, argued, and the trial court's ruling reversed by the opinion dated March 24, 2011.

This Petition for Review follows.

**7. ARGUMENT OF REASON(S) WHY REVIEW SHOULD BE ACCEPTED [RAP 13.4(b)(1) and (b)(4)] The scope of review is de novo on summary judgment and on statutory construction.**

**A. Per RAP 13.4(b)(1), Division III's decision is in conflict with the Washington Supreme Court case of In re the Estate of Bordeaux, id., in concluding that the stepparent to stepchildren relationship ended upon the death of the stepchildren's birth father. The definition of the statutory term "stepchildren" is reviewed de novo. Berrocal v. Fernandez, 155 Wn.2d 585, 590, 121 P.3d 82 (2005).**

1. In defining "stepchild," in 1950, this court in Bordeaux held that the death of the birth parent did not end the Bordeaux stepchildren's status as stepchildren.

"The rights of stepchildren have been slowly established through the years, and always in direct opposition to the common law, "whose fundamental pronouncement is that the mere relationship of step-parent and stepchild confers no rights and imposes no duties" [cite omitted]. But the modern tendency has been, and rightly so, to assimilate the stepchild to the natural child [cite omitted]. Where the legislature has passed a statute which, on its

face, appears designed to aid in accomplishing that end, we should not restrict it by resort to abstruse and little-known common-law rules, ... We are in agreement with the trial court that the principle that death of a spouse, without issue, terminates the relationship by affinity<sup>2</sup>, should not be applied to limit the meaning of the word "stepchild," as used in the statute ... [underlining added]." p. 594

The particular facts of Bordeaux when compared with the case sub judice are very similar and are compared on Appendix B, p. B-1.

Bordeaux looked to Webster's New International Dictionary to define stepchild " ... simply as 'a child of one's wife or husband by a former marriage,' and that is also the usual legal definition (cites omitted)" id. at p. 563. In further discussing the definition of "stepchild," Bordeaux stated:

"No one disputes, ..., that Chester Raymond and Russell Bordeaux were 'stepchildren' of Sarah Esther Bordeaux until the death of their natural father; and there can be little doubt that, in the popular understanding of the term at least, they remained such even after this took place ..." id., at p. 563.

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<sup>2</sup> The "tie of affinity stated that a stepchild continued to be a stepchild after the death of the natural parent, if the union of the natural parent and step-parent had produced a child." *Bordeaux, id* at p. 563-564. Historically, it was discussed in cases involving incest and the right to sit on a jury. *Bordeaux, id.* p. 564-574, and discussing *In re Raine's Estate*, 193 Wash. 394, 75 P.2d 933 (1938).

Bordeaux took judicial notice that in adopting tax acts "... probably not one legislator ... understood the word stepchild to apply only in connection with those children whose natural parent survived their stepparent ... " Id., at p. 591. The court stated there had never been a rule that the tie of affinity was broken upon the death of the natural parent ... "that there was no absolute principle ... ." Id., at p. 591.

This definition led the court to declare on its face the statute enhanced the rights of stepchildren. Although discussed as a 'tie of affinity' case, the exact issue was, whether "...upon the death of Thomas Bordeaux, ... [the stepchildren] automatically ceased to be stepchildren of ... [their surviving stepmother] ... Sarah Esther Bordeaux," and became, instead legal strangers to her ... ." Id., at p. 563.

The statute in question was Rem. Supp. 1943 § 11202 [P.P.C. § 974-21. The statute included "... child or stepchild ..." as a Class A beneficiary, which resulted in a lower percentage of charged inheritance tax, id. at 562.

In an earlier case, In re Raine's Estate, 193 Wash. 394, 75 P.2d 933 (1938), our Supreme court construed a predecessor taxing statute and had in effect adopted the "tie of affinity" analysis. The Bordeaux court determined Raine's was based on a misunderstanding of the terms

“affinity” and “stepchild,” from In Bousman’s Estate, 182 Wash. 64, 44 p.2d 1038 (1935).

Bordeaux analyzed this history and concluded that the death of the natural father did not end the stepchild relationship between his wife and her stepsons. Bordeaux overruled Raine’s.

Noteworthy is Bordeaux’s statement: “... in the case at bar, the stepmother not only maintained family ties with the [step]children after their father’s death, but also specifically designated them as beneficiaries in her Will” id., at p. 584. A conflict arises when Division III at page 4, looked to the definition of “stepchild” from the later version of Webster’s Third New International Dictionary, p. 2237 (3<sup>rd</sup> Edition, 1993), for the same definition:

“a child of one’s wife or husband by a former partner”

Division III also looked at the definition of “stepchild” from Black’s Law Dictionary: “[t]he child of one’s spouse by a previous marriage” Black’s, p. 272, (9<sup>th</sup> Edition, 2009).

2. Division III used the nearly identical definitions and came to a different interpretation and result.

Division III’s opinion omitted the ample discussion of “... the plain meaning rule requires courts to consider legislative purposes or

policies ... background facts of which judicial notice can be taken ... examining closely related statutes ... (citations omitted)” Department of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

“Upon reflection we conclude that this formulation of the plain meaning rule provides the better approach because it is more likely to carry out legislative intent ...” id., at 12.

Conclusively, on the Bordeaux definition of stepchild, the more recent 1987 case of Strickland v. Deaconess Hosp., 47 Wn.App. 262, 269, 735 P.2d 74 (Division III) cited the Bordeaux definition of “... the legally cognizable definition of a stepchild, which is ‘a child of one’s wife or husband by a former marriage: (Italics ours) In re Bordeaux, 37 Wn.2d 561, 563 ...”

3. The Bordeaux court did not add any words to the inheritance tax statute in question to determine the stepchild inheritance tax status and neither did the Spokane County Superior Court, when it decided these stepchildren were beneficiaries under the wrongful death statute.

Division III apparently determined that Judge Price’s ruling will lead to strange or absurd results. See In re Estate of Blessing, Division III, p. 4. To the contrary, Bordeaux’s holding did not lead to any cited

“strange or absurd” results. Arguably, that is because of the fact of the lengthy, close, loving relationship that the Bordeaux court found, and that the Superior Court found. Audrey’s remarriage in 2002, was 38 years after her stepparent relationship with Petitioners began. She maintained the family love after she married Mr. Blessing.

Division III’s opinion disregards these years of a lengthy, close, loving, blended-family relationship and is in conflict with Bordeaux.

4. Division III’s reliance on In re Smith’s Estate, 49 Wn.2d 229, 299 P.2d 550 (Wash. 1956) in limiting Bordeaux’s definition of “stepchild,” is misplaced.

Bordeaux held the death of the birth parent did not end the stepchild relationship. Whereas, In re Smith, held that stepchildren did not have the right to inherit from stepparents. Smith at 232.

Smith does not address the definition of stepchild, stepchildren, nor stepparent in any context. It should not limit Bordeaux’s statutory legal and factual definition of stepchild.

The importance of Smith according to one legal treatise is:

“Lawful adoption is a prerequisite to the status of issue and therefore to be a taker of the estate. A stepchild who is not adopted does not have the status necessary to be eligible to take from the estate.”

Citing to In re Smith by Washington Law of Wills and Intestate Succession by Reutlinger & Oltman, Second Printing (1998) at page 14.

Division III stated that "... Given In re Smith's Estate, Bordeaux has no bearing here (underlining added)." Division III, p. 5.

This case does not deal with the Petitioners' right to inherit from Audrey. In re Smith should not be controlling, binding, dispositive, nor authority for deciding whether a stepchild relationship ends.

5. Division III's reliance on Strickland v. Deaconess, 47 Wn.App. 262, 735 P.2d 74 (1987) is also a questionable basis to limit Bordeaux. The estate and Division III cited Strickland for the proposition that a current valid marriage is required for the Petitioners to retain their status as stepchildren. Actually, Strickland's holding was that because there had never been a valid marriage between the alleged stepparents and the alleged stepchildren had never been adopted, then they were not stepchildren and not entitled to participate in a claim based on the tort of outrage. "The Weavers were neither adopted nor "actually" stepchildren of Mr. Strickland (emphasis added P. 269)." Arguably, if the Strickland claimants' birth parent had married the decedent, they would have been stepchildren and within the class of beneficiaries to a tort of outrage claim.

No identified case has cited Strickland for the proposition that the estate and Division III have ascribed to it ... that is limits Bordeaux in requiring a “current” marriage. As before stated in this brief, Strickland “used” the Bordeaux definition of stepchild.

6. The Michigan case of In re Combs, 257 Mich. App. 622, 669 N.W.2d 313 (2003) is neither binding nor persuasive in limiting Bordeaux’s definition of stepchildren. Combs has not been cited for its holding regarding defining the term “stepchildren.” The Michigan statute in question did not define “stepchildren,” is used “a” definition but did not say “stepchildren.”

Combs does not cite Strickland as holding that a current marriage is required to be a stepchild for purposes of receiving a recovery from a wrongful death action.

Combs held that using the "plain meaning" tool of statutory construction, that the decedent in Combs had no spouse at death, therefore the decedent's deceased spouse's children were not statutory beneficiaries of the Michigan wrongful death statute. The Michigan court did not decide the case on the definition of the term "stepchildren," as the Michigan wrongful death statute did not include the term “stepchildren.”

“Stepchild” was not a term before the Michigan court. The Michigan statute stated:

“Appellants assert that they are entitled to a portion of the proceeds of the wrongful death action under subsection 2922(3), which provides in part:

(3) Subject to sections 2802 to 2805 of the estates and protected individual code, 1998 PA 386, M.C.L. § 700.2802 to 700.2805, the person or persons who may be entitled to damages under this section shall be limited to any of the following who suffer damages and survive the deceased:

(a) The deceased’s spouse, children, descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would pass under the laws of intestate succession determined as of the date of death of the deceased.

(b) The children of the deceased’s spouse (underlining added).” See Combs, 669 NW.2d at 614.

The Blessing estate argued that the Michigan definition of “children of the deceased’s spouse” meant, i.e., stepchildren.

The Combs court provided no analysis of what the “step” relationship means, how it is acquired, or how it ends. Combs held “... the plain meaning of this [statutory] provision ... [means] appellant’s are not the “children of the deceased’s spouse” because the deceased, Ellen Combs, had no spouse at the time of her death ...” *Id.*, at p. 315.

There was a well-reasoned dissent in Combs:

"... The statute is ambiguous. ... [It] ... does not clarify whether the children of the deceased spouse "refer only to the children of a surviving spouse of the deceased. Because the statute is ambiguous, and the court has the ability to determine which child of the deceased spouse truly suffered loss<sup>3</sup>, and which did not, I would not hold that the children of the deceased's deceased spouse are never proper claimants under "[the statute] [underlining added]." Combs, *id.*, p. 625, 626.

The Combs' dissent, rather than its majority opinion, analyzes that case in accordance with the greater weight of authority and policy regarding stepchildren as analyzed in In re Estate of Bordeaux, *id.*, p. 593.

**B. Per RAP 13.4 (b)(4), Division III's decision involves an issue of substantial public interest concerning the statutory rights of**

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<sup>3</sup>"In some cases, the relationship between the children of the deceased's deceased spouse may be the deceased's primary familial relationship; e.g., where the deceased has no children of his or her own, or is estranged from those children, and has had a close relationship with his or her deceased spouse's children. Or, even where the deceased has children, the marriage with the deceased spouse may have been long-term and the two families thoroughly integrated to the point where all children related to both spouses as their "parents" until and after the death of the deceased's spouse; or the potential claimants may be minors who had been raised by their natural parent and the deceased, and had continued to live with the deceased after their parent's death." Combs, 669 NW.2d at 626.

**stepchildren that should be determined by the Supreme Court. This court should also construe RCW 4.20.020 in light of this policy.**

Washington law and policy on the rights of stepchildren has been, is, and should continue to be the enhancement of the rights and status of stepchildren. Perhaps one of the practical reasons for that policy is ... that there are millions of us around.

Initially, Petitioners suggest this court continue the analysis it used in Armijo v. Wesselius, 73 Wn.2d 716, 721, 440 P.2d 471 (1968) in deciding "... in accord with a decisive current trend in legislative and decisional law which ignores legitimacy when creating or applying statutes designed to benefit children [cite omitted]."

A thorough history of Washington policy of promoting stepchildren's rights is found in the dissent in Klossner v. San Juan County, 93 Wn.2d 42, 50, 605 P.2d 330 (1980):

"The trend in the law is toward according stepchildren rights equal to those of natural children. In *In re Estate of Bordeaux*, 37 Wn.2d 561, 594, 225 P.2d 433, 26 A.L.R.2d 249 (1950), we said that the modern tendency has been, and rightly so, to assimilate the stepchild to the natural child. See also *In re Estate of Ehler*, 53 Wn.2d 679, 335 P.2d 823 (1959); *State v. Gillaspie*, 8 Wn. App. 560, 507 P.2d 1223 (1973). Our descent and distribution statutes allow inheritance from a stepparent in order to avoid escheat of property. RCW 11.04.095. The industrial insurance laws afford benefit rights to stepchildren and stepparents. RCW 51.08.030, .050. Regulations of the Department of Social and Health Services

treat children who live with a stepparent the same as children who live with both natural parents for purposes of distribution of Aid to Families with Dependent Children. *See* WAC 388-24-135. The legislature's policy most clearly expressed in RCW 26.16.205, but also contained in other statutes and administrative regulations, is to expand the rights of stepchildren. Given this policy, as well as the broad remedial purposes of RCW 4.20.020 and 4.20.060, the same liberal interpretation placed in the statutes in 1968 which allowed illegitimate children the benefits of a wrongful death action should be made in this case to extend the same benefits to stepchildren.

This dissent would have extended the right to stepchildren to be beneficiaries in a wrongful death case. The case was a precursor to the 1985 amendment of RCW 4.20.020 which added stepchildren. (See Appendix C, pp. C-1 to C-24 House Bill and Senate Bill regarding amending this statute which included a copy of the Klossner case.)

Neither the Klossner majority nor dissent had used Division III's application of the RCW 74.20A.020(8) definition requiring a current spouse. If that enactment was in 1969 and 1971, then earlier the legislature in RCW 11.04.095 defined "stepparent" as a former spouse (1965). It is equally plausible that the 1985 legislature had that "former spouse" definition in mind when it included stepchild in RCW 4.20.020.

The dependent children statutes enhanced the rights of stepchildren (RCW 74.20A.020(8) and RCW 26.16.205) rather than limiting them.

Division III accepted the estate's argument that the RCW 74.20A.020(8) definition of stepparent for dependency (emphasis added) and deemed it part of "similar definitional limits in other statutory areas." Blessing, p.4. RCW 74.20A.020(8)'s definition of a stepparent as being the present spouse of the birth parent is necessary only for the legal requirement of a stepparent providing support to a dependent child. That definition is preceded by the purpose of the Support of Dependent Children - 1971 Act that states: "Unless a different meaning is plainly required by the context, the following words and phrases shall have the following meaning: ..." It is the status of 'dependency' that is referred to in this statute's definition section, not the status of terminating the stepchild relationship as stated by Division III at p. 4. The intent and purpose of the SUPPORT OF DEPENDENT CHILDREN ACT is set forth in RCW 74.20A.010:

"... It is declared to be the public policy of this state that this chapter be construed and administered to the end that children shall be maintained from the resources of responsible parents, ..."

This statutory mandate is augmented by WAC 388-14A-1000 et seq. The definition of "responsible stepparent" there is ... a stepparent who has established an "in loco parentis" relationship with the dependent

child.” WAC 388-14A-1020. In accordance with this position is WAC 388-14A-3810, which states in pertinent part: “(1) A noncustodial parent’s obligation to pay support under an administrative order continues until: (h) A responsible stepparent’s marriage ends.”

Similarly, RCW 26.16.205 cited by Division III at p. 4, provides in pertinent part: “... The obligation to support stepchildren shall cease upon the entry of a decree of dissolution, decree of legal separation, or death.” Nothing in this statute discusses, applies, nor affects the stepparent/stepchild relationship ... except the duty of support, while married.

There is nothing clear and unequivocal in RCW 74.20A.020(8), WAC 388-14A-3810, or RCW 26.16.205 that defines or limits the prior definition of when a stepparent relationship ends or terminates.

The wrongful death statute is remedial in nature and is to be liberally construed citing the dissent in Klossner v. San Juan County, 93 Wn.2d 42, 605 P.2d 330 (1980). The Klossner majority had rejected the liberal interpretation of the wrongful death statute and declined to include stepchildren as beneficiaries.

The Klossner dissent listed the progress stepchildren had made in fulfilling the holding and policy statement of Bordeaux. See this brief p. 2 and 3, ante.

Another Washington statute has enhanced the rights of stepchildren being RCW 11.04.095, which “ ... provides that a stepchild inherits ahead of the state if the deceased stepparent had received all or substantially all of his estate, by Will or otherwise, from a predeceased spouse who was the natural parent of the stepchild ... .” Washington Law of Wills and Intestate Succession by Reutlinger & Oltman, Second Printing 1998 at page 14.

Bordeaux sets forth Washington’s initial policy regarding enhancing the rights of stepchildren:

"The rights of stepchildren have been slowly established through the years, and always in direct opposition to the common law, “whose fundamental pronouncement is that the mere relationship of step-parent and stepchild confers no rights and imposes no duties” [cite omitted]. But the modern tendency has been, and rightly so, to assimilate the stepchild to the natural child [cite omitted]. Where the legislature has passed a statute which, on its face, appears designed to aid in accomplishing that end, we should not restrict it by resort to abstruse and little-known common-law rules, ... We are in agreement with the trial court that the principle that death of a spouse, without issue, terminates the relationship by affinity, should not be applied to limit the meaning of the word “stepchild,” as used in the statute ... [underlining added].” *Bordeaux*, *id.* p. 594.

**8. ATTORNEY FEES AND COSTS (Issue C)**

The trial court did not award fees and costs to the estate. CP141-146. Both parties sought fees and costs on appeal to Division III. The TEDRA statute (RCW 11.96A.150) and RAP 18 allow the awarding of fees and costs by Division III and this court. **The issue is whether that is appropriate in this case.**

Petitioners are and were the loving stepchildren of Audrey. As Personal Representative, one of Audrey's natural children denied they were Audrey's stepchildren for the wrongful death claim. Petitioners contend ordinarily, socially, and legally their loving stepchild relationship has not automatically ended. The cards, letters, emails, and history of Audrey and these children (CP 37-124) show that.

If this court reverses Division III, then it will be a confirmation of what everybody everywhere would expect ... and the Petitioners would be beneficiaries of the death claim. If this court upholds Division III, then the stepchildren should not be punished for what they have loved.

Petitioners request that this court reverse the attorney fee and cost award to the estate, and instead award the Petitioners their costs and fees at the Appellate Court and Supreme Court levels.

## 9. CONCLUSION

Division III's holding is contrary to established law in Bordeaux, and to the Washington policy enhancing the rights of stepchildren. The lack of reliance on the underpinning of the close loving relationship between Audrey and these stepchildren creates a harsh result. Loving children from 1964 to 2007, have been told they were no longer stepchildren. That affects every stepchild in Washington.

Society is held together vertically (top to bottom) by ties of the blood (sanguinity). Society is also held together (side to side) by marriage. It is these two (2) ties that hold the family together.

Perhaps the dissent of In re Combs by Justice White and Justice Dolliver's dissent in Klossner v. San Juan County make the best arguments as to why these stepchildren have not lost their legal status as stepchildren.

### 9.1 TO AVOID ANY ABSURD RESULT

To avoid the possible absurd results alluded to by the estate and Division III, pp. 6-7, the stepchild in RCW 4.20.020 might be:

1. the issue of a current or former spouse;
2. when the marriage between those spouses was long term;

3. the stepparent established and maintained a close, personal, loving, in loco parentis relationship with the stepchild;
4. where the stepparent was the defacto "mother" or "father" of the stepchild; and
5. the stepchild is named as a devisee in the stepparent's Will or is named as a joint tenancy with right of survivorship equivalent beneficiary on non-probate assets.

This court may deem this suggestion ill-advised, too broad, too narrow, or not at all useful. It is Petitioners way of dealing with the "once a stepchild, always a stepchild" and strange [sic strained] and absurd results set forth by Division III at p. 5-6.\*\*\*

Petitioners request this court reverse the Division III decision and award them their attorney's fees and costs at trial court, Division III, and Supreme Court.

Respectfully submitted this 25<sup>th</sup> day of April, 2011.

MULLIN, CRONIN, CASEY & BLAIR, P.S.

By: 

Jack L. Blair, WSBA #7901  
Attorneys for Petitioners

\*\*\*Lane v. Harborview, 154 Wn. App. 279, 289 (2010) ... actually used the term "strained" as opposed to strange results.

# APPENDIX A

**FILED**

MAR 24 2011

In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

In re the Matter of the Estate of:	)	No. 29153-7-III
	)	
	)	Division Three
AUDREY P. BLESSING,	)	
	)	PUBLISHED OPINION
	)	
Deceased.	)	

BROWN, J.—The Estate of Audrey Blessing appeals the trial court’s ruling that the children of Audrey’s<sup>1</sup> deceased second husband were her “stepchildren” within the meaning of RCW 4.20.020 and entitled to participate in a wrongful death action brought by the estate. Audrey had survived her third husband and was unmarried at her death. Because the stepparent/stepchild relationship had legally ended before Audrey’s death, the trial court erred. Accordingly, we reverse.

**FACTS**

Audrey was first married to Alvin Hendricks from 1949 until 1964, when they divorced. While married, the couple had three daughters, including Cynthia Hagensen. In December 1964, Audrey married her second husband, Carl Blaschka. Mr. Blaschka had four children from his previous marriage to Marion: John, Julie, Diana, and Carla. Three of the children were Marion’s that Mr. Blaschka had adopted. Audrey and Mr.

---

<sup>1</sup> For clarity, Audrey Blessing’s first name is used. No disrespect is intended.

Blaschka raised their seven children together. Audrey did not adopt the Blaschka children.<sup>2</sup> No children were born to Audrey and Mr. Blaschka. Audrey and Mr. Blaschka were married until his death in 1994. After Mr. Blaschka's death, Audrey maintained a close relationship with the Blaschka children. In 2002, Audrey married her third husband, Robert Blessing. Mr. Blessing died in 2005. Audrey continued to remain close with the Blaschka children while married to Mr. Blessing and after his death.

Audrey remained unmarried and died in September 2007, allegedly as the result of an automobile collision. Audrey's will was filed in probate the next month and named Ms. Hagensen as personal representative. Audrey listed the Blaschka children as residuary beneficiaries of a portion of her estate. Ms. Hagensen made a wrongful death claim for the estate arising from the automobile collision. The parties in their briefing agree that funds derived from the wrongful death claim are not part of Audrey's estate.

In November 2009, the Blaschka children petitioned for a judicial determination that they were beneficiaries of the estate's wrongful death claim. Ms. Hagensen, as personal representative, then moved for judgment (1) declaring the Blaschka children are not "stepchildren" for the purposes of the wrongful death statute; (2) dismissing the Blaschka children's TEDRA<sup>3</sup> petition; and (3) awarding the estate attorney fees and costs. The Blaschka children moved for an order and judgment declaring them "stepchildren" of Audrey Blessing under the Washington wrongful death statute.

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<sup>2</sup> For clarity, the respondents are referred to collectively, though their surnames may currently differ. No disrespect is intended.

<sup>3</sup> The Washington Trust and Estate Dispute Resolution Act.

In June 2010 the court denied the estate's motion and declared the Blaschka children "stepchildren" of Audrey Blessing and beneficiaries in any wrongful death claim brought by her estate. The court denied reconsideration. The estate appealed.

### ANALYSIS

The issue is whether the trial court erred in deciding children of a decedent's former husband are "stepchildren" and wrongful death beneficiaries under RCW 4.20.020. A wrongful death action is "for the benefit of the wife, husband, . . . child or children, including stepchildren, of the person whose death shall have been so caused." RCW 4.20.020. The phrase "including stepchildren" was added in 1985. LAWS OF 1985, ch. 139, § 1. "Stepchildren" is not defined in the statute or in its legislative history.

Statutory interpretation is a question of law reviewed de novo. *State v. Breazeale*, 144 Wn.2d 829, 837, 31 P.3d 1155 (2001). When interpreting a statute, a court's fundamental objective is to ascertain and carry out the legislature's intent. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). The plain meaning of a statute is derived "from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Jacobs*, 154 Wn.2d at 600. When a statutory term is undefined, the court may look to a dictionary for its ordinary meaning. *State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131 (2010).

The dictionary defines stepchild as “a child of one’s wife or husband by a former partner.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2237 (3d ed. 1993).

Further, Black’s Law Dictionary defines stepchild as “[t]he child of one’s spouse by a previous marriage.” BLACK’S LAW DICTIONARY 272 (9th ed. 2009). The estate argues the ordinary meaning of stepchildren solely includes children of a person with a husband, wife, or spouse. Therefore, once a marriage has ended, the “step” relationship also ends. Br. of Appellant at 12. Given the above definitions, we agree.

Our legislature has established similar definitional limits in other statutory areas. According to the support of dependent children statute found at RCW 74.20A.020(8): “‘Stepparent’ means the present spouse of the person who is either the mother, father, or adoptive parent of a dependent child, and such status shall exist until terminated as provided for in RCW 26.16.205.” RCW 26.16.205 in turn provides that such status terminates upon the entry of a decree of dissolution, decree of legal separation, or death, or upon filing a decree of dissolution or separation if the stepparent so moves.

When the words in a statute are clear and unequivocal, we are required to assume the legislature meant exactly what it said and apply the statute as written. *Ralphs Concrete Pumping, Inc. v. Concord Concrete Pumps, Inc.*, 154 Wn. App. 581, 591, 225 P.3d 1035, *review granted*, 169 Wn.2d. 1029, 241 P.3d 786 (2010). We may not add words where the legislature has chosen to exclude them. *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). The court avoids reading the statute in ways that will lead to absurd or strange results. *Lane v. Harborview Med. Ctr.*, 154 Wn. App. 279, 289, 227 P.3d 297 (2010).

The Blaschka children note the Supreme Court defined stepchild in 1950 in *In re Estate of Bordeaux*, 37 Wn.2d 561, 593, 225 P.2d 433 (1950), and argue the legislature is presumed to have accepted that definition when it added stepchildren to the wrongful death statute in 1985. In *Bordeaux*, the claimants were designated in the will of their father's widow and the question was how their inheritance should be taxed. *Id.* at 562. The court determined the children should be taxed at the same rate as they would have been had their father survived their stepmother. *Id.* at 593. The estate responds that *Bordeaux* is inapplicable partly because, there, the stepmother had not remarried. And, the estate points to *In re Smith's Estate* which indicated that *Bordeaux* was inapplicable because its classification for inheritance tax purposes had no bearing on whether a stepchild may inherit from his stepparent as an heir-at-law. *In re Smith's Estate*, 49 Wn.2d 229, 234, 299 P.2d 550 (1956). We agree with the estate. Given *In re Smith's Estate*, *Bordeaux* has no bearing here.

The legislature added the stepchildren language to the community property chapter in 1969, including the proviso that "[t]he obligation to support stepchildren shall cease upon the entry of a decree of dissolution, decree of legal separation, or death." LAWS OF 1969, Ex. Sess., ch. 207, § 1. The legislature defined stepparent in 1971 in support of the dependent children statute. LAWS OF 1971, Ex. Sess., ch. 164, § 2. Then the definition was "the present spouse of the person who is either the mother, father, or adopted parent of a dependent child, and such status shall exist and continue until the relationship is terminated by death or dissolution of marriage." See former RCW 74.20A.020(8). Thus, when the legislature added the phrase "including stepchildren" to

No. 29153-7-III

*In re Estate of Blessing*

the wrongful death statute in 1985, it intended the step-relationship to end at death.

LAWS OF 1985, ch. 139, §§ 1, 2.

This court in *Strickland v. Deaconess Hospital*, 47 Wn. App. 262, 735 P.2d 74 (1987), held that children of a woman whose marriage to their stepfather was invalidated were not stepchildren under the newly amended wrongful death statute. *Id.* at 269. *Strickland* involved James and Robert Weaver who sued a hospital for outrage following the treatment of their stepfather, Mr. Strickland. *Id.* at 264. The court declared “‘immediate family members’ entitled to recover under a theory of outrage consists of those who are permitted to bring wrongful death actions.” *Id.* at 268-69 (citation omitted). The Weavers had been raised by Mr. Strickland, but the marriage to their mother had been invalidated. *Id.* at 264. Mr. Strickland had never adopted the Weavers. *Id.* However, the Weavers maintained a close relationship with Mr. Strickland. *See id.* at 267. The court held the Weavers lacked standing to sue because they “were neither adopted nor actually stepchildren of Mr. Strickland.” *Id.* at 269.

The Blaschka children argue *Strickland* is distinguishable because there, the Weavers’ mother had never been legally married to Mr. Strickland, so they had never been stepchildren. They argue the step relationship solely requires a once valid marriage, not a current valid marriage. We disagree. Once a stepparent does not mean always a stepparent; once the critical relationship terminates, at best the non-biological parent is a former stepparent. If the Blaschka children’s argument were to be followed for former stepchildren, then the same would follow for former divorced

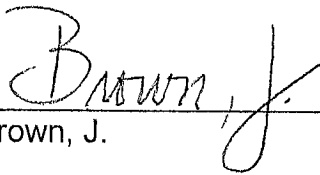
spouses, creating an absurd result. It follows that former stepchildren, like former spouses, are not statutory beneficiaries under the wrongful death statute.

In *In Re Combs Estate*, 257 Mich. App. 622, 623, 669 N.W.2d 313 (2003), the deceased's former stepchildren argued they were beneficiaries under Michigan's wrongful death statute. Michigan's wrongful death statute included as beneficiaries "children of the deceased's spouse." See *id.* at 314. The statute does not use the term "stepchildren." *Id.* The Blaschka children rely on the dissent in *Combs* which reasoned the statute was ambiguous. The majority in *Combs* held, "Applying the plain meaning of this provision to the facts of this case, we conclude that appellants are not the 'children of the deceased's spouse' because the deceased, Ellen Combs, had no spouse at the time of her death. A 'spouse' is a married person." *Id.* at 315. Additionally, the *Combs* court explicitly noted the deceased had been a widow for several years before her death.


In sum, in 1964, Audrey became the Blaschka children's stepmother when she married her second husband. Audrey was widowed by their father in 1994, remarried in 2002 for a third time, and then was widowed again in 2005; she was a single woman at her death. Though Audrey maintained a close and loving relationship with the Blaschka children and provided for them in her will, they were no longer her stepchildren at the time of her death. Therefore, the trial court erred in declaring the Blaschka children statutory beneficiaries under Washington's wrongful death statute. The estate prevails and is entitled to fees and costs under RCW 11.96A.150 and RAP 18.1.

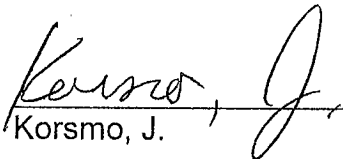
No. 29153-7-III  
*In re Estate of Blessing*

Reversed.

  
Brown, J.

WE CONCUR:

  
Kulik, C.J.

  
Korsmo, J.

# APPENDIX B

## APPENDIX B

<i>Bordeaux</i>	Blaschka
2 boys (stepchildren)	1 boy, 3 girls (stepchildren)
birth father	birth and adoptive father
Married - stepmother	Married - stepmother (Audrey)
Stepmother acted as if natural mother	Stepmother acted as if natural mother
Formed a strong, close, loving relationship	Formed a strong, close, loving relationship
Stepchildren referred to her as mother	Stepchildren referred to her as mother
Birth father died after 34 years of marriage to stepmother	Birth father died after 30 years of marriage to Audrey (stepmother)
Continued same family relationship after father's death	Continued same family relationship after father's death
No dispute children were stepchildren while parents married	No dispute children were stepchildren while parents married
Stepmother specifically designated stepchildren in her Will	Audrey specifically designated stepchildren in her Will
Issue - Determine inheritance tax classification of beneficiaries	Issue - Determine wrongful death claim beneficiaries
The step-parent legal relationship did not end at the death of the birth parent.	Issue - for this Court's review

# APPENDIX C



*Washington*

# Secretary of State

**SAM REED**

## Customer Receipt

Jacke Blair

Received: \$20.75

Credit Card #310260\_3033227695080008284292

Received On: 04/20/2011

Transaction Number: 1934798

Tracking ID: 2086771

By signing below you are authorizing the payment purchase of services rendered above on your credit card.

Signature: authorized by phone w

Thank you!

HOUSE BILL NO. 675

State of Washington      49th Legislature      1985 Regular Session  
by Representatives Niemi, Barrett, Dellwo, Crane, Lewis, Appelwick,  
Tilly, Armstrong, Padden, Schmidt, Scott, Wang and Long

Read first time 2/8/85 and referred to Committee on Judiciary.

1      AN ACT Relating to stepchildren; and amending RCW 4.20.020 and  
2      4.20.060.

3      BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4      Sec. 1. Section 2, chapter 123, Laws of 1917 as amended by  
5      section 2, chapter 154, Laws of 1973 1st ex. sess. and RCW 4.20.020  
6      are each amended to read as follows:

7      Every such action shall be for the benefit of the wife, husband,  
8      child or children, including stepchildren, of the person whose death  
9      shall have been so caused. If there be no wife or husband or such  
10      child or children, such action may be maintained for the benefit of  
11      the parents, sisters or brothers, who may be dependent upon the  
12      deceased person for support, and who are resident within the United  
13      States at the time of his death.

14      In every such action the jury may give such damages as, under all  
15      circumstances of the case, may to them seem just.

16      Sec. 2. Section 495, page 220, Laws of 1854 as last amended by  
17      section 3, chapter 154, Laws of 1973 1st ex. sess. and RCW 4.20.060  
18      are each amended to read as follows:

19      No action for a personal injury to any person occasioning death  
20      shall abate, nor shall such right of action determine, by reason of  
21      such death, if such person has a surviving spouse or child living,  
22      including stepchildren, or leaving no surviving spouse or ((issue))  
23      such children, if there is dependent upon the deceased for support  
24      and resident within the United States at the time of decedent's  
25      death, parents, sisters or brothers; but such action may be  
26      prosecuted, or commenced and prosecuted, by the executor or  
27      administrator of the deceased, in favor of such surviving spouse, or  
28      in favor of the surviving spouse and such children, or if no

Sec. 2

1 surviving spouse, in favor of such child or children, or if no  
2 surviving spouse or such child or children, then in favor of the  
3 decedent's parents, sisters or brothers who may be dependent upon  
4 such person for support, and resident in the United States at the  
5 time of decedent's death.

REPORT OF STANDING COMMITTEE

4/3/85

House Bill

NO. 675

(Type in brief title exactly as it appears on back cover of original bill)

Including stepchildren as potential plaintiffs in wrongful death  
action

(reported by Judiciary Committee): (13)

Recommendation - Majority

☒ Do pass


☐ Do pass as amended


☐ That Substitute Senate Bill No. \_\_\_\_\_  
be substituted therefor, and the  
substitute bill do pass

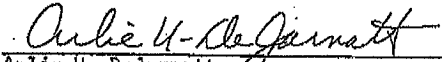
☐ Other \_\_\_\_\_

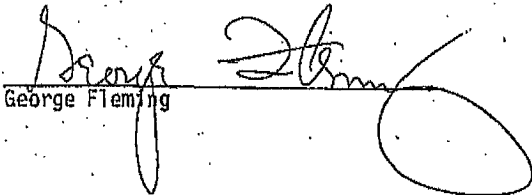
Talmadge, Chairman  
Halsan, Vice Chairman  
DeJarnatt  
Fleming  
Hayner  
McCaslin  
Metcalf  
Moore

Newhouse  
Owen  
Pullen  
Thompson  
Williams

  
Phil Talmadge, Chairman

  
Stuart A. "Stu" Halsan

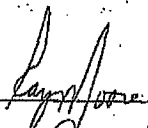
  
Arlie U. DeJarnatt

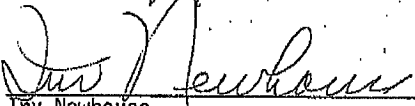
  
George Fleming

Jeannette Hayner

Bob McCaslin

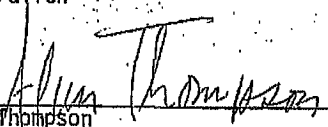
Jack Metcalf

  
Ray Moore

  
Irv Newhouse

Brad Owen

Kent Pullen

  
Alan Thompson

Al Williams

Appropriation: \_\_\_\_\_  
Revenue: \_\_\_\_\_  
Fiscal Note: \_\_\_\_\_

BILL ANALYSIS

HB 675

BY Representatives Niemi, Barrett, Dellwo, Crane, Lewis, Appelwick, Tilly, Armstrong, Padden, Schmidt, Scott, Wang and Long

Including stepchildren as potential plaintiffs in wrongful death action.

House Committee on Judiciary

House Staff: Mike Malnati (786-7124)

BACKGROUND:

Wrongful death and survival statutes provide remedies for certain relatives of deceased persons whose deaths were caused by the wrongful conduct of another. A survival statute preserves a cause of action which the decedent had for the personal injuries which caused his or her death. The right of action for injuries and damages caused to the decedent "survives" the death and may be brought on behalf of the decedent's family. A wrongful death statutes creates a cause of action for damages caused to the family of the decedent by reason of the wrongful death.

The beneficiaries under the wrongful death and survival statutes include the natural or adopted children of the deceased, but not stepchildren.

SUMMARY:

Stepchildren of deceased persons are included within the class of persons entitled to recover under the wrongful death and survival statutes.

Appropriation: \_\_\_\_\_

Revenue: \_\_\_\_\_

Fiscal Note: n/a

## BILL REPORT

HB 675

BY Representatives Niemi, Barrett, Dellwo, Crane, Lewis, Appelwick, Tilly, Armstrong, Padden, Schmidt, Scott, Wang and Long

Including stepchildren as potential plaintiffs in wrongful death action.

### House Committee on Judiciary

Majority Report: Do Pass. (18)

Signed by Representatives Armstrong, Chair; Scott, Vice Chair; Appelwick, Crane, Dellwo, Hargrove, P. King, Lewis, Locke, G. Nelson, Niemi, Padden, Schmidt, Schoon, Tilly, Van Luven, West and Wang.

House Staff: Mike Malnati (786-7124)

AS REPORTED BY COMMITTEE ON JUDICIARY MARCH 8, 1985

### BACKGROUND:

Wrongful death and survival statutes provide remedies for certain relatives of deceased persons whose deaths were caused by the wrongful conduct of another. A survival statute preserves a cause of action which the decedent had for the personal injuries which caused his or her death. The right of action for injuries and damages caused to the decedent "survives" the death and may be brought on behalf of the decedent's family. A wrongful death statutes creates a cause of action for damages caused to the family of the decedent by reason of the wrongful death.

The beneficiaries under the wrongful death and survival statutes include the natural or adopted children of the deceased, but not stepchildren.

### SUMMARY:

Stepchildren of deceased persons are included within the class of persons entitled to recover under the wrongful death and survival statutes.

House Committee - Testified For: Pat Lepley, Washington State Trial Lawyers Association.

House Committee - Testified Against: None Presented.

House Committee - Testimony For: Stepchildren of a deceased person who suffered a wrongful death should be entitled to recover compensation from the wrongdoer commensurate with the loss sustained.

House Committee - Testimony Against: None Presented.

Olympia, Wash.

Bill. NO. HB 675

DATE: 3-8-85

Committee on JUDICIARY (18)

VOTING ON:

Final Passage DP  
(DP, DPA, DPS, DP2S)

Aug. 24 1933

HOUSE BILL NO. 675

State of Washington      49th Legislature      1985 Regular Session  
by Representatives Niemi, Barratt, Dellwo, Crane, Lewis, Appelwick,  
Tilly, Armstrong, Padden, Schmidt, Scott, Wang and Long

Read first time 2/8/85 and referred to Committee on Judiciary.

1      AN ACT Relating to stepchildren; and amending RCW 4.20.020 and  
2      4.20.060.

3      BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4      Sec. 1. Section 2, chapter 123, Laws of 1917 as amended by  
5      section 2, chapter 154, Laws of 1973 1st ex. sess. and RCW 4.20.020  
6      are each amended to read as follows:

7      Every such action shall be for the benefit of the wife, husband,  
8      child or children, including stepchildren, of the person whose death  
9      shall have been so caused. If there be no wife or husband or such  
10     child or children, such action may be maintained for the benefit of  
11     the parents, sisters or brothers, who may be dependent upon the  
12     deceased person for support, and who are resident within the United  
13     States at the time of his death.

14     In every such action the jury may give such damages as, under all  
15     circumstances of the case, may to them seem just.

16     Sec. 2. Section 495, page 220, Laws of 1854 as last amended by  
17     section 3, chapter 154, Laws of 1973 1st ex. sess. and RCW 4.20.060  
18     are each amended to read as follows:

19     No action for a personal injury to any person occasioning death  
20     shall abate, nor shall such right of action determine, by reason of  
21     such death, if such person has a surviving spouse or child living,  
22     including stepchildren, or leaving no surviving spouse or ((issue))  
23     such children, if there is dependent upon the deceased for support  
24     and resident within the United States at the time of decedent's  
25     death, parents, sisters or brothers; but such action may be  
26     prosecuted, or commenced and prosecuted, by the executor or  
27     administrator of the deceased, in favor of such surviving spouse, or  
28     in favor of the surviving spouse and such children, or if no

Sec. 2

1 surviving spouse, in favor of such child or children, or if no  
2 surviving spouse or such child or children, then in favor of the  
3 decedent's parents, sisters or brothers who may be dependent upon  
4 such person for support, and resident in the United States at the  
5 time of decedent's death.

HOUSE BILL NO. 675

by Representatives Niemi, Barrett, Dellwo, Crane, Lewis, Appelwick, Tilly, Armstrong,  
Padden and Schmidt

---

Including stepchildren as potential plaintiffs in wrongful death action.

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2-6-85  
2-8-85

1 AN ACT Relating to stepchildren; and amending RCW 4.20.020 and CR85B  
2 4.20.060. F

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON: H

4 Sec. 1. Section 2, chapter 123, Laws of 1917 as amended by -1010  
5 section 2, chapter 154, Laws of 1973 1st ex. sess. and RCW 4.20.020 ; 1  
6 are each amended to read as follows: PARTA

7 Every such action shall be for the benefit of the wife, husband, ; 3  
8 child or children, including stepchildren, of the person whose death 12  
9 shall have been so caused. If there be no wife or husband or such 13  
10 child or children, such action may be maintained for the benefit of 14  
11 the parents, sisters or brothers, who may be dependent upon the 15  
12 deceased person for support, and who are resident within the United 16  
13 States at the time of his death. 16

14 In every such action the jury may give such damages as, under all 17  
15 circumstances of the case, may to them seem just. 18

16 Sec. 2. Section 495, page 220, Laws of 1854 as last amended by 20  
17 section 3, chapter 154, Laws of 1973 1st ex. sess. and RCW 4.20.060 23  
18 are each amended to read as follows: 23

19 No action for a personal injury to any person occasioning death 24  
20 shall abate, nor shall such right of action determine, by reason of 25  
21 such death, if such person has a surviving spouse or child living, 26  
22 including stepchildren, or leaving no surviving spouse or ((issue)) 28  
23 such children, if there is dependent upon the deceased for support 29  
24 and resident within the United States at the time of decedent's 30  
25 death, parents, sisters or brothers; but such action may be 31  
26 prosecuted, or commenced and prosecuted, by the executor or 31  
27 administrator of the deceased, in favor of such surviving spouse, or 32  
28 in favor of the surviving spouse and such children, or if no 33

1 surviving spouse, in favor of such child or children, or if no 34  
2 surviving spouse or such child or children, then in favor of the 35  
3 decedent's parents, sisters or brothers who may be dependent upon 36  
4 such person for support, and resident in the United States at the 37  
5 time of decedent's death. 37

# Report of Standing Committee

HOUSE OF REPRESENTATIVES  
Olympia, Washington

March 8, 1985  
(date)

HOUSE BILL \_\_\_\_\_ No. 675  
(Type in House or Senate Bill, Resolution, or Memorial)

Prime Sponsor Representative Niemi

Including stepchildren as potential plaintiffs in wrongful death action.  
(Type in brief title exactly as it appears on back cover of original bill)

reported by Committee on JUDICIARY (18)

- ☒ MAJORITY recommendation: Do Pass.  
☐ MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass.  
☐ MAJORITY recommendation: Do pass with the following amendment(s):

Signed by  
Representatives

(18)

Seth Armstrong  
ARMSTRONG Chair  
Scott Scott  
SCOTT Vice Chair  
Stanley Applegate  
APPELWICK  
Charles Crane  
CRANE  
Dennis A. DeLew  
DELEW  
Jim Hargrove  
HARGROVE  
King P.  
KING, P.  
Jim Lewis  
LEWIS  
Ray Locke  
LOCKE

Lawrence Nelson  
NELSON, G.  
Steve Niemi  
NIEMI  
Mike Padden  
PADDEN  
Karen Schmidt  
SCHMIDT  
Mark Schoon  
SCHOON  
Ernie Tilly  
TILLY  
Van Loven  
VAN LOVEN  
West  
WEST  
Wang  
WANG

ATTACHMENT: Committee Roll Call Vote

☐ Check here if Minority Report Requested (see back)

SENATE BILL REPORT

HB 675

BY Representatives Niemi, Barrett, Dellwo, Crane, Lewis, Appelwick, Tilly, Armstrong, Padden, Schmidt, Scott, Wang and Long

Including stepchildren as potential plaintiffs in wrongful death action.

House Committee on Judiciary

Senate Committee on Judiciary

Senate Hearing Date(s): April 3, 1985

Senate Staff: Heather Ballash (786-7418)

AS OF MARCH 29, 1985

BACKGROUND:

Wrongful death and survival statutes provide remedies for certain relatives of deceased persons whose deaths were caused by the wrongful conduct of another. A survival statute preserves a cause of action which the decedent had for the personal injuries which caused his or her death. The right of action for injuries and damages caused to the decedent "survives" the death and may be brought on behalf of the decedent's family. A wrongful death statute creates a cause of action for damages caused to the family of the decedent by reason of the wrongful death.

The beneficiaries under the wrongful death and survival statutes include the natural or adopted children of the deceased, but not stepchildren.

SUMMARY:

Stepchildren of deceased persons are included within the class of persons entitled to recover under the wrongful death and survival statutes.

Fiscal Note: none requested

SENATE BILL REPORT

HB 675

BY Representatives Niemi, Barrett, Dellwo, Crane, Lewis, Appelwick, Tilly, Armstrong, Padden, Schmidt, Scott, Wang and Long

Including stepchildren as potential plaintiffs in wrongful death action.

House Committee on Judiciary

Senate Committee on Judiciary

Senate Hearing Date(s): April 3, 1985

Majority Report: Do pass.

Signed by Senators Talmadge, Chairman; Halsan, Vice Chairman; DeJarnatt, Fleming, Moore, Newhouse, Thompson.

Senate Staff: Heather Ballash (786-7418)  
April 4, 1985

AS REPORTED BY COMMITTEE ON JUDICIARY, APRIL 3, 1985

BACKGROUND:

Wrongful death and survival statutes provide remedies for certain relatives of deceased persons whose deaths were caused by the wrongful conduct of another. A survival statute preserves a cause of action which the decedent had for the personal injuries which caused his or her death. The right of action for injuries and damages caused to the decedent "survives" the death and may be brought on behalf of the decedent's family. A wrongful death statute creates a cause of action for damages caused to the family of the decedent by reason of the wrongful death.

The beneficiaries under the wrongful death and survival statutes include the natural or adopted children of the deceased, but not stepchildren.

SUMMARY:

Stepchildren of deceased persons are included within the class of persons entitled to recover under the wrongful death and survival statutes.

Fiscal Note: none requested

Senate Committee - Testified: Gerry Zmolek, WSTLA

HOUSE BILL REPORT

HB 675

BY Representatives Niemi, Barrett, Dellwo, Crane, Lewis, Appelwick, Tilly, Armstrong, Padden, Schmidt, Scott, Wang and Long

Including stepchildren as potential plaintiffs in wrongful death action.

House Committee on Judiciary

Majority Report: Do Pass. (18)

Signed by Representatives Armstrong, Chair; Scott, Vice Chair; Appelwick, Crane, Dellwo, Hargrove, P. King, Lewis, Locke, G. Nelson, Niemi, Padden, Schmidt, Schoon, Tilly, Van Luven, West and Wang.

House Staff: Mike Malnati (786-7124)

AS PASSED HOUSE MARCH 13, 1985

BACKGROUND:

Wrongful death and survival statutes provide remedies for certain relatives of deceased persons whose deaths were caused by the wrongful conduct of another. A survival statute preserves a cause of action which the decedent had for the personal injuries which caused his or her death. The right of action for injuries and damages caused to the decedent "survives" the death and may be brought on behalf of the decedent's family. A wrongful death statute creates a cause of action for damages caused to the family of the decedent by reason of the wrongful death.

The beneficiaries under the wrongful death and survival statutes include the natural or adopted children of the deceased, but not stepchildren.

SUMMARY:

Stepchildren of deceased persons are included within the class of persons entitled to recover under the wrongful death and survival statutes.

House Committee - Testified For: Pat Lepley, Washington State Trial Lawyers Association.

House Committee - Testified Against: None Presented.

House Committee - Testimony For: Stepchildren of a deceased person who suffered a wrongful death should be entitled to recover compensation from the wrongdoer commensurate with the loss sustained.

House Committee - Testimony Against: None Presented.

## SHB 660

private carriers. The rules are to conform with the federal regulations so far as reasonable. At least 30 days prior to the filing of the notice of proposed rules, the WSP will submit the proposals for Legislative Transportation Committee review.

The rule making authority of the Washington State Patrol for private carrier hours of service and driver qualification standards is contingent upon continued receipt of federal safety enforcement funds. If the federal funds are withdrawn, the State Patrol and Utilities and Transportation Commission must repeal any adopted private carrier hours and qualification WAC rules within 90 days.

### VOTES ON FINAL PASSAGE:

House	94	4	
Senate	30	18	(Senate amended)
House			(House refused to concur)
Senate			(Senate receded)
House	95	1	

EFFECTIVE: July 28, 1985

## HB 670

C 107 L 85

By Representatives Basich and Hargrove

Changing salmon troll license provisions.

House Committee on Natural Resources

Senate Committee on Natural Resources

### BACKGROUND:

Salmon trollers and salmon gillnetters receive permits from the Department of Fisheries to fish within specified districts. The law specifies that gillnetters must obtain a separate license for each district. It is not clear if a separate salmon troll license must be purchased for each district.

Problems have arisen between trollers and fisheries patrol officers regarding the intent of the law.

### SUMMARY:

It is clarified that a single salmon troll license applies to all fishing districts.

### VOTES ON FINAL PASSAGE:

House	98	0
Senate	48	0

EFFECTIVE: July 28, 1985

## HB 675

C 139 L 85

By Representatives Niemi, Barrett, Dellwo, Crane, Lewis, Appelwick, Tilly, Armstrong, Padden, Schmidt, Scott, Wang and Long

Including stepchildren as potential plaintiffs in wrongful death action.

House Committee on Judiciary

Senate Committee on Judiciary

### BACKGROUND:

Wrongful death and survival statutes provide remedies for certain relatives of deceased persons whose deaths were caused by the wrongful conduct of another.

The beneficiaries under the wrongful death and survival statutes include the natural or adopted children of the deceased, but not stepchildren.

### SUMMARY:

Stepchildren of deceased persons are included within the class of persons entitled to recover under the wrongful death and survival statutes.

### VOTES ON FINAL PASSAGE:

House	96	0
Senate	45	0

EFFECTIVE: July 28, 1985

## SHB 717

C 206 L 85

By Committee on Energy & Utilities (originally sponsored by Representatives Todd, Isaacson, D. Nelson, Schmidt, Unsoeld, Long, Van Loven, Cole, Crane, Brough, Allen, Thomas and Wineberry)

VOTE

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Senate  
House

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[No. 46010. En Banc. January 17, 1980.]

PATRICIA L. KLOSSNER, Individually and as Executrix,  
ET AL, Respondents, v. SAN JUAN COUNTY,  
Petitioner.

- [1] Judgment — Summary Judgment — Interrogatories — Sufficiency. In order for interrogatories and answers thereto to be considered in a motion for summary judgment they must satisfy CR 56(e), including the requirement that they be made on personal knowledge.
- [2] Judgment — Summary Judgment — Burden of Proof. A party moving for a summary judgment has the burden of establishing the absence of a material issue of fact and may not rely on the opposing party's failure to establish the existence of such an issue.
- [3] Death — Wrongful Death — Survival of Actions — Stepchildren. The wrongful death and survival statutes (RCW 4.20.020, .060) do not allow recovery by the unadopted stepchildren of the decedent.

DOLLIVER, WRIGHT, BRÄCHTENBACH, and HOROWITZ, JJ., dissent by separate opinion; UTTER, C.J., and STAFFORD, J., did not participate in the disposition of this case.

**Nature of Action:** The widow of a truck driver who died when his vehicle left the road sought damages from the county for herself and on behalf of the decedent's children and stepchildren.

**Superior Court:** The Superior Court for San Juan County, No. 3054, Howard A. Patrick, J., on June 10, 1977, granted summary judgment in favor of the defendant.

**Court of Appeals:** The court reversed the summary judgment at 21 Wn. App. 689 except as to the unadopted stepchildren.

**Supreme Court:** Holding that the defendant failed to establish that there was no material issue of fact, and that the wrongful death and survival statutes do not permit recovery by stepchildren, the court *affirms* the decision of the Court of Appeals.

Owen A. Johnson and Robert Butler, for petitioner.

Aiken, St. Louis & Siljeg and Douglas W. McQuaid, for respondents.

WILLIAMS, J.—Petitioner San Juan County appeals from a decision of the Court of Appeals which reversed the trial court's order granting summary judgment and dismissing respondent Patricia Klossner's action brought under the wrongful death and survival statutes, RCW 4.20.020 and RCW 4.20.060. *Klossner v. San Juan County*, 21 Wn. App. 689, 586 P.2d 899 (1978). We affirm the Court of Appeals.

Respondent's husband, Dean L. Klossner, died as a result of injuries sustained when his truck left the road in San Juan County. Respondent thereafter instituted an action against petitioner individually and in her capacity as both personal representative of the estate of her deceased husband and guardian ad litem for decedent's minor children and his unadopted stepchildren. In her complaint respondent alleged negligence in the design, construction, and maintenance of the road, its shoulder, and the adjoining ditch. She further alleged petitioner failed to post adequate warning signs when it knew or should have known that the shoulder was incapable of supporting the weight of a truck.

Both parties engaged in pretrial discovery by way of interrogatories. Thereafter, petitioner moved for summary judgment and in support of the motion attached its interrogatories to respondent along with her answers. Respondent, in opposition to the motion, filed her interrogatories to the petitioner along with its answers. No other documents were filed in support of or in opposition to the motion.

Neither respondent's complaint nor her answers to petitioner's interrogatories were based on her personal knowledge. Similarly, petitioner's answers to respondent's interrogatories were not based on personal knowledge. Nor did either set of documents show that the affiant was competent to testify to the matters stated therein. On the basis of that record, petitioner contended in its motion that there

was no genuine issue as to any material fact regarding liability and that respondent's action was improperly brought on behalf of the decedent's stepchildren, since they were not entitled to recover under this state's wrongful death and survival statutes. The motion for summary judgment was granted.

On appeal, the Court of Appeals reversed the trial court. In the majority opinion, the court held that reasonable inferences could be drawn from respondent's answers to the interrogatories which would raise an issue of material fact regarding negligence. *Klossner v. San Juan County*, *supra* at 693-94. In an opinion concurring in the result, two judges added that petitioner failed to meet its burden of showing there was no material issue of fact, because allegations contained in the documents filed in support of the motion were based on hearsay and thus inadmissible under CR 56(e).<sup>1</sup> *Klossner v. San Juan County*, *supra* at 695-96 (Andersen, A.C.J., concurring in the result). All three judges agreed that the wrongful death and survival statutes did not allow recovery by the decedent's unadopted stepchildren, and the court affirmed that portion of the summary judgment order which dismissed the claims of the stepchildren. We granted San Juan County's petition for review. *Klossner v. San Juan County*, 91 Wn.2d 1022 (1979).

[1] Affidavits submitted in support of a motion for summary judgment must be made on personal knowledge, set forth admissible evidentiary facts, and affirmatively show that the affiant is competent to testify as to his or her averments. CR 56(e); *Meadows v. Grant's Auto Brokers*,

<sup>1</sup>CR 56(e), in effect at the time petitioner's motion for a summary judgment was granted, provided as follows:

"(e) Form of Affidavits; Further Testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits."

*Inc.*, 71 Wn.2d 874, 431 P.2d 216 (1967). Answers to interrogatories may be considered in ruling on a motion for summary judgment, as long as such answers satisfy the other requirements of CR 56 and contain admissible material. *American Linen Supply Co. v. Nursing Home Bldg. Corp.*, 15 Wn. App. 757, 551 P.2d 1038 (1976). Affidavits or answers to interrogatories verified on belief only and not on personal knowledge do not comply with CR 56(e) and therefore fail to raise an issue as contemplated by the rule. *Stringfellow v. Stringfellow*, 53 Wn.2d 639, 335 P.2d 825 (1959).

[2] Petitioner contends it presented uncontroverted evidence that there was no eyewitness to the accident. It then argues that having done so it is incumbent upon the respondent to present evidence raising a material issue of fact on the question of petitioner's negligence. Since respondent's answers to interrogatories were not based on personal knowledge, petitioner concludes that they were therefore inadmissible for that purpose.

Presumably, the evidence on whether there was an eyewitness to the accident was contained in either of the parties' answers to the interrogatories or the pleadings, for they were the only evidentiary documents considered by the trial court in ruling on the motion for summary judgment. Those are the same documents which petitioner on the one hand relies on to establish the nonexistence of an eyewitness to the accident, but on the other contends respondent cannot use to establish facts creating an issue, because they are not based on personal knowledge. Obviously, petitioner may not have it both ways. Indeed, it may not have it either way, for none of the documents satisfies CR 56(e). They were not made on personal knowledge nor did they affirmatively show that the affiant was competent to testify to the matters stated therein. Thus, they were inadmissible in evidence. It follows that petitioner failed to meet its burden of proving there was no material issue of fact. See *Morris v. McNicol*, 83 Wn.2d 491, 519 P.2d 7 (1974). Accordingly, as the Court of Appeals held, the trial

court erred in granting petitioner's motion for summary judgment.

Respondent brought this action on behalf of decedent's children from a prior marriage, the children born to her and the decedent, and her own children who had not been adopted by decedent. The trial court dismissed all claims brought on behalf of the decedent's unadopted stepchildren on the ground that they were not beneficiaries under the wrongful death and survival statutes.<sup>2</sup>

Respondent contends that the purpose of the statutes is to provide a remedy for the family of the deceased commensurate with the loss sustained through his death. *Hedrick v. Ilwaco Ry. & Nav. Co.*, 4 Wash. 400, 403, 30 P. 714 (1892). Moreover, she claims this purpose has been furthered by a recent trend in the law extending to stepchildren those rights accorded natural and adopted children. She concludes, therefore, that the wrongful death and survival statutes, being remedial in nature, should be liberally construed to include stepchildren as beneficiaries.

[3] Respondent is correct in declaring that there is a trend in the law enhancing the rights of stepchildren. It is

<sup>2</sup> "Every such action shall be for the benefit of the wife, husband, child or children of the person whose death shall have been so caused. If there be no wife or husband or child or children, such action may be maintained for the benefit of the parents, sisters or brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his death. "In every such action the jury may give such damages as, under all circumstances of the case, may to them seem just." RCW 4.20.020.

"No action for a personal injury to any person occasioning death shall abate, nor shall such right of action determine, by reason of such death, if such person has a surviving spouse or child living, or leaving no surviving spouse or issue, if there is dependent upon the deceased for support and resident within the United States at the time of decedent's death, parents, sisters or brothers; but such action may be prosecuted, or commenced and prosecuted, by the executor or administrator of the deceased, in favor of such surviving spouse, or in favor of such child or surviving spouse and children, or if no surviving spouse, in favor of the decedent's parents, sisters or brothers who may be dependent upon such person for support, and resident in the United States at the time of decedent's death." RCW 4.20.060.

noteworthy, however, that the extension of rights to stepchildren in Washington has been accomplished heretofore by the legislature, not by this court, and that the legislature has imposed careful limits on those rights. Thus, for example, the legislature has extended inheritance rights to stepchildren only under narrow circumstances: When the property would otherwise escheat to the state. RCW 11.04.095. Moreover, the legislature has specifically limited a stepchild's right of support from a stepparent to the period of the marriage between the child's natural parent and the stepparent. RCW 26.16.205. Finally, the industrial insurance laws, while providing some benefits to stepchildren and stepparents, also set dependency and other limits on those benefits. RCW 51.08.030, .050; RCW 51.32.020, .025.

The wrongful death and survival statutes, unlike those statutory provisions cited by respondent, contain no mention of stepchildren. RCW 4.20.020, .060. The beneficiaries of a wrongful death action are, among others, a "child or children". RCW 4.20.020. It is a general rule of construction that words in a statute, unless otherwise defined, must be given their usual and ordinary meaning. *Dominick v. Christensen*, 87 Wn.2d 25, 27, 548 P.2d 541 (1976). While the legislature has defined "child" in some statutes to include stepchildren (see, e.g., RCW 51.08.030), there is no such extension of the definition of the term in RCW 4.20.020.

Moreover, this court's several decisions that the wrongful death statute is to be liberally construed do not mean we may read into the statute matters which are not there. *King County v. Seattle*, 70 Wn.2d 988, 991, 425 P.2d 887 (1967). Respondent cites *Armijo v. Wesselius*, 73 Wn.2d 716, 440 P.2d 471 (1968), as an example of liberal construction of the statute. In that case we interpreted the word "child" to include an illegitimate child of the decedent.<sup>3</sup> Such a result

<sup>3</sup> Webster's Third New International Dictionary (1971) includes "male or female descendant" and "adopted child" in its definition of "child", but nowhere includes the term "stepchild."

does no violence to the plain meaning of the statutory language. By definition, an illegitimate child is a child of its parent, which is all the statute requires.<sup>4</sup>

It is evident, therefore, that recent extensions of stepchildren's rights in Washington have been made in all cases by the legislature and that the legislature has carefully limited the rights it has extended. To include stepchildren in the class to be protected by the wrongful death statute would require us to read into the statute something clearly not intended by the legislature. This we may not do. Accordingly, the Court of Appeals is affirmed.

ROSELLINI and HICKS, JJ., and HUNTER and KIRKWOOD, JJ. Pro Tem., concur.

DOLLIVER, J. (dissenting)—The question here is whether the word "child" or "children" includes unadopted stepchildren. Most jurisdictions which hold that unadopted stepchildren cannot bring an action for wrongful death rely on a strict construction of wrongful death and survival statutes because they are in derogation of the common law. See Annot., *Action for Death of Stepparent by or for Beneficiary of Stepchild*, 68 A.L.R.3d 1220 (1976); *Steed v. Imperial Airlines*, 12 Cal. 3d 115, 524 P.2d 801, 115 Cal. Rptr. 329 (1974); *Marshall v. Macon Sash, Door & Lumber Co.*, 103 Ga. 725, 30 S.E. 571 (1898); *Flores v. King*, 13 Md. App. 270, 282 A.2d 521 (1971). Until this case, we had

<sup>4</sup>Respondent cites two other cases in support of the proposition that there is a trend extending equal rights to stepchildren. Again, the rights of stepchildren in those cases had been legislatively established by the explicit inclusion of the word "stepchild" in the statutory language. *In re Estate of Bordeaux*, 37 Wn.2d 561, 225 P.2d 433, 26 A.L.R.2d 249 (1950); *State v. Gillaspie*, 8 Wn. App. 560, 507 P.2d 1223 (1973). In *Bordeaux*, petitioners claimed to be stepchildren of decedents for inheritance tax purposes, and the court's task was to determine whether they were in fact stepchildren within the meaning of the tax statute. Laws of 1943, ch. 277, § 1, p. 870 (now RCW 83.08.020). In *Gillaspie*, the issue was whether a stepparent, separated but not divorced from his stepchild's mother, had a duty to support the child before the divorce was final. RCW 26.20.030(1)(b). The court was not called on in either of the cases to decide whether stepchildren were to be afforded certain rights, which is the issue in the present case.

taken a different approach and held that this state's wrongful death statute, because it is remedial in nature, is to be liberally construed to accomplish the purposes behind its enactment. *Cook v. Rafferty*, 200 Wash. 234, 93 P.2d 376 (1939); *Johnson v. Ottomeier*, 45 Wn.2d 419, 275 P.2d 723 (1954); *Gray v. Goodson*, 61 Wn.2d 319, 378 P.2d 413 (1963); *Armijo v. Wesselius*, 73 Wn.2d 716, 440 P.2d 471 (1968).

What is the purpose of wrongful death statutes? It is to provide a remedy whereby the family or relatives of the deceased, those who might naturally have expected maintenance or assistance from him had he lived, may recover compensation from the wrongdoer commensurate with the loss sustained. *Hedrick v. Ilwaco Ry. & Nav. Co.*, 4 Wash. 400, 30 P. 714 (1892); Note, 44 Wash. L. Rev. 523 (1969). In this case, decedent's stepchildren might naturally have expected maintenance or assistance from him had he lived because RCW 26.16.205 requires stepparents to support their stepchildren. This legal obligation imposed upon the stepparent creates a reciprocal right of stepchildren to maintain a wrongful death action to recover compensation from the wrongdoer commensurate with the loss sustained.

In *Armijo v. Wesselius*, *supra*, we interpreted the word "child" in the wrongful death statutes to include unadopted illegitimate children of the decedent. The majority dismisses *Armijo* with the observation that "an illegitimate child is a child of its parent". But this is exactly the point. The court in *Armijo* rejected the kind of narrow construction of the law urged by the majority here and by the dissent in *Armijo*. While the narrow view might well have fitted the outlook and mores of Victoria's England, it hardly comports with either the realities of or the appropriate value systems of today.

In *Armijo* we said, "Society is becoming progressively more aware that children deserve proper care, comfort, and protection even if they are illegitimate." *Armijo*, at 721. The modern view is to look to the welfare of children and to protect them from consequences over which they have no

control. Just as they do not ask for the status of illegitimacy, neither do they become stepchildren through their own devices. While in 1846 when Lord Campbell's Act, the original wrongful death statute, was framed, a divorce was a scandal and stepchildren were a rarity, today the former is accepted and the latter are commonplace.

The trend in the law is toward according stepchildren rights equal to those of natural children. In *In re Estate of Bordeaux*, 37 Wn.2d 561, 594, 225 P.2d 433, 26 A.L.R.2d 249 (1950), we said that the modern tendency has been, and rightly so, to assimilate the stepchild to the natural child. See also *In re Estate of Ehler*, 53 Wn.2d 679, 335 P.2d 823 (1959); *State v. Gillaspie*, 8 Wn. App. 560, 507 P.2d 1223 (1973). Our descent and distribution statutes allow inheritance from a stepparent in order to avoid escheat of property. RCW 11.04.095. The industrial insurance laws afford benefit rights to stepchildren and stepparents. RCW 51.08-.030, .050. Regulations of the Department of Social and Health Services treat children who live with a stepparent the same as children who live with both natural parents for purposes of distribution of Aid to Families with Dependent Children. See WAC 388-24-135. The legislature's policy most clearly expressed in RCW 26.16.205, but also contained in other statutes and administrative regulations, is to expand the rights of stepchildren. Given this policy, as well as the broad remedial purposes of RCW 4.20.020 and 4.20.060, the same liberal interpretation placed in the statutes in 1968 which allowed illegitimate children the benefits of a wrongful death action should be made in this case to extend the same benefits to stepchildren.

I dissent.

WRIGHT, BRACHTENBACH, and HOROWITZ, JJ., concur.

[No. 44663. En Banc. January 24, 1980.]

JOSEPH E. O'BRIEN, ET AL, *Appellants*, v. SHEARSON HAYDEN STONE, INC., *Respondent*.

[1] **Conflict of Laws — Usury — Choice of Law by Parties — Most Significant Relationship — Maximum Interest Rates.** A contract containing no stipulated rate of interest cannot be sustained against a charge of usury if the law of the state which the parties chose to govern the contract authorizes a rate of interest greatly in excess of the rate permitted by the law of the state with the most significant relationship to the transaction.

HOROWITZ, J., UTTER, C.J., and STAFFORD and BRACHTENBACH, JJ., dissent in part by separate opinion.

**Nature of Action:** The Supreme Court granted a motion for reconsideration of its decision at 90 Wn.2d 680 which held that Washington law applied to determine the usurious nature of interest charged on margin account contracts.

**Supreme Court:** Holding that the margin account contracts could not be sustained against a charge of usury under Washington law, the court *adheres* to its prior decision.

Carl G. Koch and Terence P. Lukens (of Karr, Tuttle, Koch, Campbell, Mawer & Morrow), for appellants.

Fredric C. Tausend and Rex B. Stratton (of Schweppe, Doolittle, Krug, Tausend & Beezer), for respondent.

Richard O. Scribner on behalf of Securities Industry Association and Dale B. Ramerman on behalf of Merrill Lynch, Pierce, Fenner & Smith, amici curiae.

DOLLIVER, J.—The first opinion in this case was filed on October 19, 1978, and can be found in 90 Wn.2d 680, 586 P.2d 830 (1978). We adhere to that opinion, but add the following comments:

The heart of the analysis of the defendant is that the Restatement (Second) Conflict of Laws § 203, comments a